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*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
The Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES, LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

BENJAMIN W. ROTH; and

MARION B. ROTH,

Defendants.

Adv. Pro. No. 10-05284 (SMB)

TRUSTEE'S REQUEST FOR A CERTIFICATE OF DEFAULT

To: CLERK OF THE COURT
UNITED STATES BANKRUPTCY COURT

Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities, LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and Bernard L. Madoff, by and through his counsel, Baker & Hostetler LLP, respectfully requests that the Clerk of the Court issue a Certificate of Default against defendants Benjamin W. Roth and Marion B. Roth, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, made applicable to this Adversary Proceeding by Rule 7055 of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 7055-1 for failure to plead or otherwise defend the above-captioned action as it fully appears from the Court file and from the attached Affidavit.

WHEREFORE, the Trustee respectfully requests that this Court grant the Trustee's Motion in its entirety and provide for such other relief as this Court deems just and proper.

Dated: New York, New York
November 13, 2015

Respectfully submitted,

/s/ Nicholas J. Cremona

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CORPORATION,

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BERNARD L. MADOFF INVESTMENT
SECURITIES, LLC,

Defendant.

In re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
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Plaintiff,

v.

BENJAMIN W. ROTH; and

MARION B. ROTH,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-05284 (SMB)

**AFFIDAVIT SUPPORTING THE TRUSTEE'S REQUEST
FOR A CERTIFICATE OF DEFAULT**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Nicholas J. Cremona, being duly sworn, hereby attests as follows:

1. I am a member of the Bar of this Court and a partner at the firm of Baker & Hostetler LLP, which is counsel for Irving H. Picard ("Trustee"), Trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* ("SIPA") and the estate of Bernard L. Madoff, individually. I submit this affidavit in support of the Trustee's application for a certificate of default from the Clerk pursuant to Bankruptcy Rule 7055 of the Federal Rules of Bankruptcy and Local Bankruptcy Rule 7055-1.

2. On December 6, 2010 the Trustee commenced this adversary proceeding by filing a complaint (the "Complaint") against NTC & Co. LLP, as former custodian of an individual retirement account for the benefit of Benjamin W. Roth; NTC & Co. LLP, as former custodian of an individual retirement account for the benefit of Marion B. Roth; Benjamin W. Roth; and Marion B. Roth ("Defendants"). (Dkt. No. 1.) The Complaint asserted claims pursuant to sections 78fff(b), 78fff-1(a) and 78fff-2(c)(3) of SIPA, sections 105(a), 544, 548(a), 550(a), and 551 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, and other applicable law, seeking the avoidance and recovery of fraudulent transfers in connection with certain transfers of property by BLMIS to or for the benefit of Defendants. (*Id.*).

3. On March 11, 2011, the Clerk of this Court issued a summons upon Defendants. (Dkt. No. 5.)

4. On March 14, 2011, the Trustee, in accordance with Bankruptcy Rule 7004(b) of the Federal Rules of Bankruptcy Procedure, timely served the Summons and Complaint upon Benjamin W. Roth and Marion B. Roth ("Defaulting Defendants"). (See Dkt. No. 6.) An Affidavit of Service evidencing proper and timely service was filed with the Court. (Dkt. No. 6.) A true and correct copy of the Affidavit of Service is attached hereto as Exhibit A.

5. Pursuant to the Order (1) Establishing Litigation Case Management Procedures For Avoidance Actions And (2) Amending The February 16, 2010 Protective Order governing the litigation of certain avoidance actions, including this adversary proceeding, the time by which Defaulting Defendants may answer or otherwise move with respect to the Complaint was set to expire on May 10, 2011. (See Dkt. No. 5.)

6. From July 18, 2011 through January 14, 2015, the Trustee and Defaulting Defendants stipulated and agreed to extend the time by which Defaulting Defendants may answer or otherwise respond to the Complaint a total of twenty-four times. On January 14, 2015, the Trustee and Defaulting Defendants stipulated and agreed that the time by which Defaulting Defendants may answer or otherwise respond to the Complaint would be March 13, 2015. The Trustee filed a Notice of Extension with this Court on January 14, 2015. (See Dkt. No. 38.)

7. Despite being duly served with the Summons and Complaint and being given twenty-four extensions to answer or otherwise respond to the Complaint, Defaulting

Defendants did not file an answer, move, or otherwise respond to the Complaint on or before March 13, 2015.

8. Pursuant to the Supreme Court's denial of the Trustee's petitions for certiorari in *Sec. Investor Prot. Corp. v. Ida Fishman Revocable Trust*, No. 14-1128 (U.S. June 22, 2015) and *Picard v. Ida Fishman Revocable Trust*, No. 14-1129 (U.S. June 22, 2015), on November 12, 2015 the Trustee filed a Notice of Voluntary Dismissal with Prejudice of Certain Claims in Adversary Proceeding, which dismissed Counts Two through Six only of the Trustee's Complaint in the above-captioned adversary proceeding. (See Dkt. No. 41.)

9. Upon information and belief, the Defaulting Defendants are neither infants nor incompetents.

10. On November 13, 2015, I performed a search on the Department of Defense Manpower Data Center (DMDC). Upon searching the information data banks of DMDC, the DMDC does not possess any information indicating that Defaulting Defendants are currently on active duty as to all branches of the Military.

11. I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

/s/ Nicholas J. Cremona

Nicholas J. Cremona

Sworn to before me this
13th day of November, 2015


Notary Public

SONYA M. GRAHAM
Notary Public, State of New York
No. 01GR6133214
Qualified in Westchester County
Commission Expires: 9/12/2017

UNITED STATES BANKRUPTCY COURT
Southern District of New York

SECURITIES INVESTOR PROTECTION
CORPORATION,

Adv. Pro. No. 08-01789 (BRL)

Plaintiff-Applicant,

SIPA LIQUIDATION

v.
BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

(Substantively Consolidated)

Defendant.

In re:

BERNARD L. MADOFF,

Case No. 09-11893 (BRL)

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Adv. Pro. No. 10-05284 (BRL)

Plaintiff,

v.

NTC & CO LLP, AS FORMER CUSTODIAN OF
AN INDIVIDUAL RETIREMENT ACCOUNT
FOR THE BENEFIT OF BENJAMIN W. ROTH,

NTC & CO LLP, AS FORMER CUSTODIAN OF
AN INDIVIDUAL RETIREMENT ACCOUNT
FOR THE BENEFIT OF MARION B. ROTH,

BENJAMIN W. ROTH, and

MARION B. ROTH,

Defendants.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

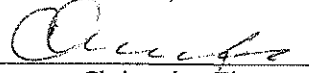
I, Christopher Timony declare:

1. I am over the age of 18 years and not a party to these chapter 11 cases.
2. I am employed by Donlin, Recano & Company, Inc., 419 Park Avenue South, Suite 1206, New York, NY 10016.
3. On the 14th day of March, 2011, I caused a true and accurate copy of the:
 - (i) "Complaint", along with the relevant exhibits (Docket No. 1); and the

- (ii) "Notice of Applicability of the Order Approving Case Management Procedures for Avoidance Actions" (Docket No. 2); and the
- (iii) "Summons and Notice of Pretrial Conference in An Adversary Proceeding" (Docket No. 5); and the
- (iv) "Order (1) Establishing Litigation Case Management Procedures for Avoidance Actions and (2) Amending the February 16, 2010 Protective Order" dated November 11, 2010; and the
- (v) "Avoidance Action Executive Summary Letter dated December 20, 2010"; and the
- (vi) "Third Amended Notice of Omnibus Avoidance Action Hearing Dates",

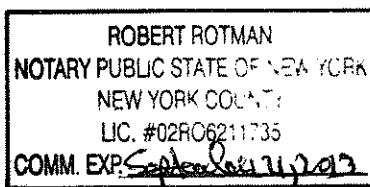
to be served upon the parties listed on Exhibit 1, attached hereto, via First Class US Mail.

- 4. Said documents were securely enclosed in postage prepaid envelopes and delivered to an office of the United States Postal Service for delivery by First Class Mail.
- 5. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge. Executed this 14th day of March, 2011 at New York, New York.

By 
Christopher Timony

Sworn before me this
14th day of March, 2011


Notary Public



Date : 3/14/2011

Adv Pro No: 10-05284 (BRL)

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Exhibit 1
Redacted Version

BENJAMIN W. ROTH

BENJAMIN W. ROTH
BOCA RATON FL 33433

000444 005517

STROOCK & STROOCK & LAVAN LLP,
ATTN: DANIELLE A. WALSMAN, ESQ.
180 MAIDEN LANE
NEW YORK NY 10038

Counsel - 000444 005520

MARION B. ROTH

MARION B. ROTH
BOCA RATON FL 33433

001623 005516

STROOCK & STROOCK & LAVAN LLP,
ATTN: DANIELLE A. WALSMAN, ESQ.
180 MAIDEN LANE
NEW YORK NY 10038

Counsel - 001623 005521

NTC + CO.

THOMAS J. SCHELL
BRYAN CAVE LLP
1290 AVENUE OF THE AMERICAS
NEW YORK NY 10104

Counsel - 002357 012157